

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION  
MINUTES OF MEETING, Public Session

November 4, 2004

Call to order: Chairwoman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:50 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairwoman Randolph, Commissioners Philip Blair, Sheridan Downey, Pam Karlan, and Tom Knox were present.

**Item #1. Public Comment.**

None.

**Consent Calendar**

Commissioner Blair moved approval of the following items:

- Item #2. Approval of the September 2, 2004, Commission Meeting Minutes.**
- Item #3. Approval of the October 7, 2004, Commission Meeting Minutes.**
- Item #4. In the Matter of BJK Investments, Inc., FPPC No. 03/560. (1 count).**
- Item #5. In the Matter of Miranda Tsao, FPPC No. 04/163. (1 count).**
- Item #6. In the Matter of Henry Manayan, Manayan for Mayor, and Manayan for Mayor 2000, FPPC No. 00/752. (1 count).**
- Item #7. In the Matter of Mark Baldwin, FPPC No. 03/204. (3 counts).**
- Item #8. Fair Political Practices Commission v. Association of California School Administrators Issues Political Action Committee and Bob Wells, FPPC No. 03/282.**
- Item #9. Fair Political Practices Commission v. San Franciscans Against the Blank Check—No on Measure D Committee Sponsored by PG&E, James R. Sutton, and PG&E Corporation, FPPC No. 03/061.**
- Item #10. In the Matter of Michael Jackman, FPPC No. 02/1083. (3 counts).**
- Item #11. Failure to Timely File Statements of Economic Interests.**
  - a. In the Matter of Anthony Bejarano, FPPC No. 04/446. (1 count).**

- b. In the Matter of Jorge Jasso, FPPC No. 04/442. (1 count).**
- c. In the Matter of William Kruer, FPPC No. 04/505. (1 count).**
- d. In the Matter of Carol Romo, FPPC No. 04/411. (1 count).**
- e. In the Matter of Roger Farrell, FPPC No. 04/254. (1 count).**
- f. In the Matter of Bobbie Parks, FPPC No. 04/0459. (2 counts).**
- g. In the Matter of Nicholas Arguimbau, FPPC No. 04/086. (2 counts).**

Commissioner Knox seconded the motion.

Commissioners Blair, Downey, Karlan, Knox, and Chair Randolph voted, “Aye.” The motion carried by a 5-0 vote.

#### **Item Removed From Consent**

There were none.

#### **Item #12. Pre-Notice Discussion of Amendments to the “Gift Cluster” Regulations 18946, 18946.1, 18946.2, and 18946.4; and adoption of regulation 18640.**

Commission Counsel Bill Lenkeit noted that the Commission received two public comment letters on this item which will be discussed during this presentation.

Mr. Lenkeit explained that he will be discussing proposed amendments to the Political Reform Act (PRA) relating to gifts in order to reduce improper influences on candidates and public officials. Specifically, the Commission will consider the methods for determining the value of a gift received. There are currently three valuation methods: fair market value, face value, and cost to the donor. Some gifts are exempt and thus have “no value.”

Mr. Lenkeit advised that the Commission consider three questions: 1) Should the value of attending an invitation-only event be determined by the pro-rata share of the cost of the event? 2) Should there be a limited exception to this rule when the person attending only stays for a brief time and does not receive the full benefits of the event (ie the “drop-in” rule)? 3) Should the “no value” rule for tickets to fundraisers for 501(c)(3) organizations be either modified or eliminated?

Mr. Lenkeit explained that there is no clear regulatory language governing the first issue, invitation-only events. The issue arose out of an invitation-only Commissioner’s Party, hosted by the National Football League (NFL) as part of Super Bowl 2003. There was disagreement between Commission staff and the San Diego City Attorney regarding whether the reporting amount should be the pro rata share of the cost of the event or the pro rata share of the cost of

food and beverages only. Commission staff advised the San Diego City Attorney that the reported amount should be the pro-rata cost of the event.

Mr. Lenkeit identified 5 proposed decision points (DP) under this first issue. DP 1 contains proposed definitions for “face value,” “ticket,” and “invitation.” DP 2 would modify the “face value” rule for tickets purchased at a price higher than face value. DP 3 would codify the “pro-rata share of the cost of the event” rule for all invitation-only events. DP 4 would codify the method for determining “pro-rata share,” and DP 5 would modify the “pro-rata share of the cost of the event” rule where an official attends the event to perform an official or ceremonial function.

Mr. Lenkeit commented that the second issue relates to the “drop-in” rule for lobbyist employer sponsored events so that where an official simply “drops in” for a quick visit during an event, the value of the gift may be limited to the actual cost of any food and beverage consumed. Staff offers codifying the drop-in rule for all invitation-only events or eliminating it altogether. DP 6 would codify the “drop-in” rule for attendees of invitation-only events, and DP 7 would cross-reference the “pro-rata share of the cost of the event” rule and “drop-in” rule to the lobbyist employer reporting regulations.

Mr. Lenkeit explained that the third issue arose as a result of the distribution of Rose Bowl Parade and Game tickets to Pasadena City officials by the Pasadena Tournament of Roses Association, a 501(c)(3) organization. Because the Association was a 501(c)(3) organization, the tickets were considered to have no value. Staff suggests this regulation may need amending so that tickets to events that are “commercially marketed” will not be considered of no value, despite having come from a 501(c)(3) charitable organization. DP 8 includes this proposed regulation to either modify or eliminate the “no value” rule.

Commissioner Blair mentioned that, as a City Councilman in San Diego, he dealt with this issue of gifts. He suggested that it would be helpful to have a form from the 501(c)(3) to say whether the gift is of no value, in order to ensure that both the donor and the official have the same understanding of the cost, and so that the official will know the cost of the item at the time of receipt. He asked whether this idea has ever been considered.

Chairwoman Randolph commented that this issue arises in one of two contexts: the lobbyist context, where both parties must report, and the non-lobbyist context, where only one party must report.

Technical Assistance Chief Carla Wardlow agreed, saying there is a provision requiring written notification of the gift amount by lobbying organizations at the state level, but this is not required upon the presentation of the gift. The local level is more difficult to monitor because the Commission does not know all of the groups who make gifts.

Commissioner Blair expressed concern about officials who decide to accept a gift or attend an event and then find out later that the cost was much greater than they anticipated.

Chairwoman Randolph discussed the difference between the regulatory role and a “best practices” role, mentioning that a local official should get in the practice of calling the donor and asking for the cost of the gift as a “best practice,” but that there may not be a regulatory role.

In response to a question, Mr. Lenkeit said the exemption for 501(c)(3) charitable organizations came from a request from the Governor’s office in 1991 for all non-profit fundraising events. He said that the apparent rationale for allowing the exemption was that the 501(c)(3) could not engage in political activities.

General Counsel Luisa Menchaca interjected that part of the rationale was that 501(c)(3) organizations often receive a promotional value by the attendance of the official which accounts for consideration in receiving a free ticket. She noted that Common Cause opposed the codification of the exemption for 501(c)(3) organizations.

Commissioner Downey commented that the Governor’s office would receive many invitations, so the Commission opted for a practical solution of treating these invitations as “no value,” even though the value received is not clear.

Mr. Lenkeit added that a ticket that is not used also falls under the “no value” rule.

Commissioner Karlan wondered about the distinction between a “gift” and a “gift of no value.” She asked whether hospitality at one’s home is considered a gift under the proposed rules.

Ms. Wardlow advised that hospitality in the home is simply a social event. However, where the event is a fundraiser and the cost of the event is paid out of the proceeds, then that would likely not be treated as home hospitality.

Commissioner Karlan explained that in the past, she has held events for a 501(c)(3) where she bore the cost of the event and the proceeds went to the organization. She suggested the Commissioners think about those areas where it is unclear whether something is a gift and whether it is “of value.”

Ms. Wardlow added that if the host took a tax deduction for hosting the event, then the event would be considered a fundraiser and not home hospitality.

Chairwoman Randolph pointed to the three choices which are to keep the proposed language as it is, move to a “commercially marketed” distinction, or eliminate the exception altogether. She asked for public comment.

Kathryn Donovan from Pillsbury Winthrop commented that the rules for gifts are already complicated and that any amendments will make these rules more complicated. She supports making the rules simpler. She would like to preserve the exception for charitable fundraisers because it does serve a public purpose to promote the fundraising activities by involving public officials in the events. The Rose Bowl situation was unique. In most cases, corporations pay for these types of tickets, and they are given out selectively. If the Commission makes any changes

to the non-profit exception because of the Rose Bowl situation, she advised the Commission to do this “with a scalpel rather than with a machete.”

Commissioner Karlan agreed that it is important to have public officials at these events, but in return, the organizations should make it obvious that the official is there in order to serve the purpose of the official’s presence. She questioned whether there should be a requirement that the organization make public that the official was there.

Chairwoman Randolph commented that she did not see how the Commission could require this public notification under the PRA. In addition, she suggested that the Rose Bowl ticket issuers could have skirted around such a requirement by giving the tickets to the agency to determine how to distribute them. Then, the issuers could say that they did not know which individuals the tickets would end up going to.

Ms. Menchaca commented that the agency must memorialize the information in the public record so that the public is able to look at the information after the fact.

Commissioner Karlan opined that these are valuable events but that she is still concerned about the public being informed of the official’s participation in an event. The public official should balance the benefit to the organization, the benefit to himself, and the cost to his constituents.

Ms. Donovan noted that the Morretti golf tournament, for example, raises funds for scholarships by bringing legislators and lobbyists to play in the tournament. There is no connection between the Moretti Foundation and the Legislature, and the event raises funds for a good cause. There are a number of organizations and events that would be limited in their fundraising efforts without this exception.

In response to a question, Ms. Donovan responded that if the exception no longer existed, then the gift limits would be imposed on these events. The attendee would likely be limited to only one event a year. Thus, it hampers the activities of legitimate charities.

In response to a question, Ms. Donovan suggested combining the idea of limiting the number of tickets in the Rose Bowl type situation and using the “commercially marketed” exception, so long as that exception is clearly explained.

Commissioner Karlan said that at some point, the event is so large that the official’s presence does not assist in generating more revenue. She asked whether the focus should be on the attendance so that, if the public official would not provide any beneficial effect to the event, then the gift limits exception for charitable events should not apply.

Ms. Donovan said she had not thought of that approach, but clear guidelines would be helpful. In addition, she suggests narrowing the guidelines so that officials are able to participate and benefit the event and organization.

Commissioner Karlan suggested that the Commission could set the standards for what is considered “commercially marketed.” But, it seems that the concern is about the large events, not the small ones.

Chairwoman Randolph summarized that the concern is about an official receiving tickets to valuable events that cost a lot of money or are extremely popular, not just a small dinner. She questioned whether this problem is wide spread or whether it is limited to these few situations.

Ms. Menchaca commented that concern behind the “no value” rule amendment proposals is that adequate consideration has not been provided. To the extent that consideration is provided, there is no gift. As currently worded, the regulation’s public interest served does not match up with the valuation of “fair market value.” If there is truly a promotional value to the gift, then the question is whether the official provided adequate consideration for the event. Thus, the options before the Commission include deleting or limiting the exemption or leaving it as it is.

Scott Hallabrin from the Assembly Ethics Committee explained that he is not appearing before the Commission with any official position by the Assembly. He advises Assembly members and staff on gift questions, which he gets more of than any other question. First, regarding charitable events, Mr. Hallabrin said that the various tests are confusing. Whether the public is aware of the event does not relate to the value of the gift. The issue is whether the official is getting something that is really expensive versus the need for their appearance. Thus, the question is how to value that gift. A possible approach is to assign a value over which the gift from the 501(c)(3) should be reported. There is precedent for this under the PRA provisions relating to giving speeches inside and outside of California. Second, regarding the ticket value of the 501(c)(3) event, there is a problem with the “pro-rata cost to the donor” suggestion because in cases like the Rose Bowl situation, the networks, for example, may get free tickets. It could get very confusing to require the networks to divide the millions of dollars it was paid to do the broadcast by the number of people who paid for tickets.

Mr. Hallabrin further commented that under DP 1, it would be better to cross-reference where the definitions in that proposed amendment are applying because they do not appear in the section. DP 2 seems counter-intuitive for the official, because one official may have a different ticket cost than another, depending on when the ticket was purchased by the donor. On DP 5, ceremonial functions, it would be best to make the value calculation the same for ticketed events and invitation-only events to avoid confusion. Also, food and beverage and attendance by spouse and immediate family is not considered a gift. Lastly, regarding the “drop-in” rule, Mr. Hallabrin suggests avoiding the imposition of any time limit on the “drop-in” rule and clarifying that the value to the official is not only the amount he or she consumes but also the amount that someone in the entourage consumes, unless that additional person was also a separate invitee.

In response to a question, Mr. Hallabrin suggested that it would be easiest to leave the “face value” rule for ticketed events because it is a clear rule.

Chairman Randolph suggested the Commission move through the Decision Points.

Mr. Lenkeit suggested beginning with DP 3, which deals with the valuation method for invitation-only events.

Commissioner Downey suggested including the cross-reference recommended by Mr. Hallabrin.

Mr. Lenkeit agreed. He explained that DP 3 would codify the “pro-rata share of the cost of the event” rule for all invitation-only events and not just when a candidate or official is honored at a dinner.

In response to a question, Mr. Lenkeit advised that an invitation-only event is still such even though the invitees may pay a cost to attend.

Commissioner Karlan suggested that in cases where the invitation has a face value, the value to the official should be the face value of the event, rather than the pro-rata share of the cost of the event.

Mr. Lenkeit said that the problem with doing that is that the “face value” is not market tested and could be any value that the host wanted it to be. The question is whether the ticket is available for sale to the public.

Chairwoman Randolph questioned why it would matter whether the “face value” has been market tested when everyone who attends the event gets the benefit of the event at that price, including the official.

Commissioner Karlan agreed.

Mr. Lenkeit responded that the official would only be reporting the face value of the ticket rather than the value of the gift received.

Commissioner Karlan said that is also true under a “face value” of the general market rule (which is the current rule).

Mr. Lenkeit said that is true, except that tickets which are sold on the general market are at least market-tested, whereas an invitation-only ticket is not.

Chairman Randolph commented that the same problem would exist under the “pro-rata share of the cost to the donor” rule, which she is not sure she supports, because even though the invitation cost is listed on the invitation, the official would need to then ignore the value and call the donor to ask for the actual cost to the donor.

Ms. Wardlow hypothesized that probably every major lobbying group in California will ticket every event at a low value, like \$25, even though the cost to the firm is \$300. A lobbying group would then report a different number than the official. It would open a loophole to say that the value printed on the invitation for an invitation-only event is the “face value” for reporting purposes.

In response to a question, Ms. Wardlow explained that the reporting value of tickets for non-501(c)(3) fundraisers, like a Chamber of Commerce dinner, are determined by their face value or by the value of the goods received by the official.

Chairwoman Randolph added that the kinds of events that are the focus of this discussion are things like Super Bowl events, but also events in Sacramento where the purpose of the event is to meet with public officials. However, outside of Sacramento, there are lots of events where the purpose is not necessarily to meet with elected officials. She agreed with Ms. Donovan that it is difficult when there are different rules for lobbyist events than for other events, which is why it would be good to codify the “drop-in” rule as an overall exception.

Commissioner Blair commented that it would be difficult to establish a method by which to determine the value of the event, from the piano player to the food, etc. He questioned whether it matters to the extent that one must “nickel and dime” each aspect of the event.

Chairwoman Randolph suggested that there are invitation-only events that have no ticketed value, and in these cases, there must be a way to set a value for that event.

Commissioner Karlan distinguished between invitation-only events where everyone invited is a guest and invitation-only events where everyone must pay to attend. We need to be careful about ensuring that the public knows where the officials are spending their time and ensuring that officials are not being influenced by certain groups by receiving something of tremendous value from them.

Mr. Lenkeit clarified that the events that are the focus of this discussion are events where an official is invited and they do not have to pay anything. Most of these invitation-only events are 501(c)(3) fundraisers. For an industry event, not a non-profit event, where a mayor is invited but is given a complimentary ticket where the other guests must pay, the mayor may have to report the value of his pro-rata share of the cost of the event.

Ms. Menchaca said that this fact pattern is similar to the San Diego invitation-only event which was a unique event. The Commission could explore the idea of having a “face value” definition for events which are open to the public separate from the definition for those events which are invitation-only. Ms. Menchaca shares the concern that the “face value” reflected on the invitation has no relationship to the benefit received by the public official.

Commissioner Blair expressed concern about officials receiving valuable tickets for free, which later grew substantially in value.

Chairwoman Randolph explained that for an invitation-only event, one would use the “pro-rata share” rule, which is the issue here. We need to clarify that where there is an invitation-only event, the pro-rata share rule will be used.

Commissioner Blair questioned how one would learn of the cost of the event.



Ms. Menchaca clarified that the official would need to call and ask for an estimate of the pro-rata share of the event, and where the sponsor does not have an exact figure, they could get a ballpark figure. If the event exceeds the gift limit, then the official has thirty days to pay it down.

Commissioner Karlan questioned whether the official must pay the estimated cost as anticipated before the event or the actual cost calculated after the event occurred.

Mr. Lenkeit responded by saying that the reported cost can be either the estimated cost or the actual cost as determined after the event. If the amount ends up over the gift limit, then the official would need to pay it down.

Ms. Menchaca said that Commission staff considered making a change to this regulation but decided to leave it as it is because the method of calculation by each organization will differ.

Chairman Randolph clarified that an official can report either the estimated cost or the actual reported cost.

Ms. Donovan distinguished between expected and unexpected increases in the cost of the event.

Commissioner Karlan observed that non-lobbyist organizations do not generally calculate the pro-rata cost, which would take some effort, so the official may never be able to get a clear number. There ought to be some point at which the official can rely on the cost estimate he is given.

Ms. Donovan said that it is a challenge for lobbyist employers to determine reporting amounts for each official, and the amount is always higher after the event. Usually, the amount is in the same ballpark, but that ballpark may be close to or over the limit.

Ms. Menchaca opined that this is the reason staff believe there should be a regulation in place. The definition of the “pro-rata share of the cost of the event” contemplates inclusion of all the costs associated with the event. In addition, an official can always decline to attend the event.

In response to a question, Mr. Lenkeit explained that the phrase, “plus the value of any specific item that is presented to the official or candidate at the event” refers to any extra gift that is given to the official or to all the attendees.

Chairman Randolph questioned whether the universe of these types of events, which exclude non-profit fundraisers, political events, and public ticketed events, is small, and if so, then should these be lumped in with all invitation-only events.

Commissioner Downey agreed and said he did not want to open a loophole, prefers to keep this regulation simple, and is inclined to support the current language.

In moving to DP 4, Mr. Lenkeit said that much of what had been discussed related to DP 4 as well. The public comment letter from San Diego speaks to this DP. He explained that San Diego argued that the better method would be to determine the pro-rata share by dividing the

cost by the number of people invited in order to have a more definite estimate up front. Staff believes this would create a large loophole because an organization could invite numerous extra people in order to bring the cost down. This concept was considered when the regulation was first adopted and was rejected for this reason.

Commissioner Knox questioned whether there is a way to better allow an attendee to know in advance the assigned value of the event.

Commissioner Downey said that his inclination is to keep the focus on the number of acceptances, which can be really close to the actual cost.

Commissioner Karlan expressed her concern for an official who wants to know the value of the event before he makes the decision to attend.

Chairman Randolph questioned whether this is a pervasive problem that needs to be resolved.

Ms. Menchaca offered a suggestion to allow an official who has already obtained an estimate to report the value but it would not be subject to the gift limit.

Chairman Randolph opined this is probably too broad of an area to do that.

Commissioner Knox questioned whether there is a way to give an official who does his due diligence of calling the organization to find out the cost of the event a “safe harbor” if they are relying on what the organization told them. The concern may be that the organization would estimate the cost low.

Ms. Wardlow agreed that that is a concern, and that it would also lead to discrepancies between the reports by the lobbyist employer and the official’s report. Both of these are concerns.

Commissioner Karlan observed that there is no way of knowing how many “buy downs” and “paybacks” there are.

Mr. Hallabrin explained that in his experience, the issue typically has been about whether the official has to report the gift, not whether the official violates the gift limit. Usually, it is not that big of an issue because it only relates to whether they must report the gift.

Chairman Randolph suggested that because this item is pre-notice, the Commission can continue to consider these issues. She directed staff to change “RSVP’s” to “accepted invitations” or something similar and to consider alternatives for whether the official can rely on the pre-event estimate.

Commissioner Karlan added that she is more comfortable knowing that the issue really only affects whether an official should report the gift.

Chairman Randolph suggested moving to DP 2, which deals with the “face value” rule. The question is whether to change that rule to require the official to report the actual cost of the ticket

to the donor. She expressed her opposition to the suggested change because it would burden the official to query the donor, and the information would be a moving target.

Commissioner Downey agreed, so long as officials do not currently query the donor for this information.

Mr. Lenkeit advised that whether a ticket may be worth more than its face value depends on the type of event.

Commissioner Blair explained that if a company purchases Super Bowl tickets, for example, only a few days before the game and at a high price, the ticket still says \$200 on the face of it, but the company did not pay that.

Commissioner Karlan said that she thought this problem was made clear in the proposed language. If the ticket was given by the operator of the event, then the official could rely on its face value. If the donor is not the operator of the event but is instead a middle person, then the official is on notice that he should inquire about the cost. All the official would need to do is ask how much the donor paid for the ticket.

Chairman Randolph stated that she thinks this would burden the official with having to take a step that he may not normally be on notice to take.

Commissioner Knox suggested adding a clause that said to report “the face value, unless the official knows or reasonably should know that the value is more...”

Chairman Randolph said she was not sure if she liked that suggested language.

Commissioner Karlan suggested a rule to require that if the ticket comes from the actual issuer of the ticket, it is the face value. If it comes from anyone else, the official would have to ask how much the donor paid for it.

Mr. Hallabrin said there would be confusion about who the operator is versus the owner of the season ticket. He prefers a clear rule.

Ms. Menchaca offered a proposed rule which would put the focus on the amount the ticket is worth at the time the official accepts it.

Chairman Randolph said she did not think that would be a good idea because it would be even harder to determine the price.

Commissioner Karlan opined that the point of focus needs to be on the time the donor purchased the ticket, because the donor knows the price they paid.

Commissioner Blair observed that there are probably only two or three events each year that fit into this category of increasing prices of tickets over their face value.

Commissioner Karlan theorized that there would be a problem even in cases where the donor paid more than the face value of a ticket to something as simple as a play.

Chairman Randolph reminded the Commissioners that this discussion is pre-notice and that they can think about these issues for a few months before making a decision.

Ms. Wardlow said there are also some situations where someone receives a ticket and then passes it one to another so that the cost to the donor is zero.

Commissioner Karlan suggested that the value would then be the face value or the cost paid by the donor, whichever is greater.

Chairman Randolph said that this may be very common, especially with corporations who buy a group of tickets and then distribute them to their employees who give them to local officials.

Mr. Lenkeit explained that DP 5 proposes to add an exception to the “pro-rata” rule when the official is attending to perform an official or ceremonial function. The exception would be limited to only the official and not his or her family because the exception would then be too broad.

Commissioner Blair opined that it is reasonable for the official to bring their spouse or staff member.

In response to a question, Mr. Lenkeit suggested that a ceremonial event might be the cutting of a ribbon.

Mr. Hallabrin pointed out that the proposed language also exempts food or beverages for the official.

Chairman Randolph said it makes sense to allow the spouse or other guests to accompany the official, and suggested an option to make the language parallel with regulation 18944.1(d) and perhaps an option to allow the official to bring a guest.

Commissioner Blair questioned whether being introduced at an event qualifies as a ceremonial event. He suggested language such as “on the program” in order to avoid a mere introduction as qualifying the official for the exception.

Chairman Randolph directed staff to tell the Commissioners if there are any advice letters on the question about what is considered a ceremonial event.

Mr. Lenkeit introduced DP 6, saying the proposal would make the “drop-in” rule available for all invitation-only events and not just lobbyist employer events, which is the way it is currently used. The City of San Diego commented on this issue and stated their opposition to the language of “brief period of time” and suggested fixing a time period depending on the length of the event. Staff does not agree with the City’s recommendation.

Chairman Randolph clarified that the question is whether to codify the “drop-in” concept or eliminate it. She feels that it should be maintained. The next question is regarding how to structure the amount of time to be considered a “drop-in” visit: a “brief period of time,” a specific window of time such as thirty, forty-five, or sixty minutes, and whether the official would be allowed to eat anything.

Commissioner Knox expressed his sympathy for the desire by the City of San Diego to have more clear guidance than “brief period.”

Commissioner Karlan opined that if the official attends and does not eat or participate in the entertainment, that that should be enough. So long as the official does not eat, then they could stay as long as desired and still be considered a “drop-in.” Or, if the official does not receive certain benefits of the event, then it could be considered a “drop-in.”

Mr. Lenkeit advised that the main focus is that the official does not stay for the whole event.

Commissioner Downey said that if the event is a meal with entertainment, then the official should avoid both. But, for receptions only, then how should the official conduct themselves as a “drop-in.”

Commissioner Karlan suggested that if the official does not take the meal that is offered, that is a “drop-in.” If there is no meal, but other food or drink is served, the official should not eat the food or should pay for the food in order for it to qualify as a “drop-in.”

Commissioner Knox said the rule could include a time limit and the cost of the food and beverage consumed. If the amount is under \$10, then the official does not need to be concerned. There is always an option to pay it down, if it exceeds a reasonable amount.

Chairman Randolph identified three categories: the time spent, the refreshments, and the entertainment. To “drop-in,” the official could not partake in the entertainment, the value of any food and beverage, if under \$10, would be okay, and there should be a time limit.

Commissioner Knox suggested an hour as a good time limit.

Chairman Randolph expressed interest in having a time limit because it is a clear rule. But, she does not support having a fraction of the event as the time limit because there may be no specified time limit to the event.

Commissioner Downey agreed, saying “up to an hour” is fair and provides certainty.

Commissioner Blair said he is comfortable with “brief.”

Mr. Hallabrin opined that he prefers to avoid a specific time limit. The current rule allows officials to attend events where they can meet other officials and contacts who they need to get to know, while still avoiding any receipt of gifts and reporting requirements. Putting a time limit on this would have an effect on this otherwise valuable time for officials to meet people. The

rule he would prefer is to avoid consumption, but if there is entertainment, the “drop-in” rule would not apply. Most of these events include hors d'oeuvres and drinks, not meals.

Chairman Randolph observed that the Commission could restructure the language so that the options include either a time limit combined with a reporting of the consumed items or a bright line rule of no food consumption combined with no time limit.

Mr. Lenkeit advised that there should still be some type of reduced amount of time.

Commissioner Karlan called the latter a “no food or water rule,” summarizing it by saying that if the official does not eat or drink anything, they could stay as long as they would like.

Commissioner Downey expressed that this rule goes too far.

Commissioner Blair commented that this seems a little extreme.

Mr. Hallabrin said that he advises officials to report only what they consumed, if it was only a carrot stick and some water, for example. He does not specify a time limit in his advice to officials. He advised that the Commission rules do not require reporting of anything under the gift reporting amount of \$50, so he advises officials to contact the host and let them know they did not consume the total amount and to get this in writing. If partaking fully in the reception, then the official should report the full share, but if he does not eat but stays, then no need to report, and if he eats just a little and leaves after a short visit, then also no need to report. He does not see this issue as a major problem.

Chairman Randolph proposed that perhaps no change to the options are needed.

Commissioner Karlan asked whether the regulated community would like a bright line rule, which the Commission could do.

Chairman Randolph said the Commission can solicit that information from the community before the next meeting on this. This type of exception could become a “safe harbor” or a loophole.

Commissioner Blair stated that he would like to have a rule that encouraged elected officials to do “drop-ins” rather than being burdensome due to the paperwork and reporting requirements. It is very common for an official to go to several events in one evening.

Chairman Randolph moved the discussion to DP 8, relating to 501(c)(3) organizations.

Commissioner Blair said he likes option 2, which states, “no value, provided no more than two tickets are provided.”

Mr. Lenkeit explained that option 2 is the “machete” approach, whereas option 3 is the “scalpel.”

Chairman Randolph disagreed, saying that the “machete” approach would be to eliminate the exception entirely. Option 2 would allow the exception for no more than 2 tickets, and option 3 would apply the exception to only certain kinds of 501(c)(3) events.

Commissioner Karlan said that option 2 seems reasonable because it encourages the official to be there but without bringing a lot of family and friends.

Commissioner Blair suggested that additional guests typically include the official’s staff. He supports offering two tickets for that reason.

Commissioner Knox said he is not convinced that the Commission should maintain the exception. He is unsure whether 501(c)(3) organizations should receive special status.

Chairman Randolph asked whether anyone would like to keep the “commercially marketed event” concept on the table, option 3, which she stated she was not interested in keeping.

Commissioners Downey and Karlan agreed with Chairman Randolph.

Commissioner Karlan commented that the 501(c)(3) definition covers a wide range of organizations, so that some are purely charitable and some are not charitable at all and are instead quite political.

Chairman Randolph directed staff to bring back option 1 and 2, and eliminate option 3 from the list.

### **Item #13. Executive Director’s Report.**

Executive Director Mark Krausse introduced legal interns Kara Mazzucca and Calisse Donathan and Executive Fellow Theis Finlev, who were present in the audience, and thanked them for their work with the FPPC.

### **Item #14. Litigation Report.**

General Counsel Luisa Menchaca had nothing further to add.

Chairman Liane Randolph announced that the Court issued a preliminary injunction in *California Republican Party v. FPPC*, prohibiting the Commission from enforcing the advertising disclosure rules as to party committees.

Commissioners went into closed session at 12:35 p.m.

The meeting adjourned at 1:45 p.m.

Dated: November 10, 2004.

Respectfully submitted,

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Whitney Barazoto  
Commission Assistant

Approved by:

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Chair Randolph